

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1629 of 1997

in

SPECIAL CIVIL APPLICATION No 5175 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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MANAGING TRUSTEE

Versus

STATE OF GUJARAT

Appearance:

MR PJ PATEL for Appellant
GOVERNMENT PLEADER for Respondent No. 1
MR JR NANAVATI for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 13/02/98

ORAL ORDER (PER C.K.THAKKER J.)

This appeal is filed against an order passed by the learned Single Judge in Special Civil Application No. 5175 of 1997 dt. August 8, 1997.

The appellant is original petitioner. It is a trust registered under the Bombay Public Trust Act, 1950. It filed a petition for an appropriate writ directing the respondents to grant affiliation to the petitioner college with North Gujarat University, and to continue

the said affiliation. According to the petitioner, affiliation granted by the State Government in June 1996, could not be made limited upto June 1997 or December 1997.

Notice was issued by the learned Single Judge, pursuant to which parties appeared. The learned Single Judge after interpreting the relevant provisions of the North Gujarat University Act, 1986 held that the petitioner college was located at Rajkot within the jurisdictional area of Saurashtra University. In accordance with the provisions of the Saurashtra University Act, 1965, it should make an application for affiliation to that University. The petitioner was not entitled to affiliation with North Gujarat University. The learned Single Judge also noted that in exercise of powers under sub-section (4) of Section 5 of the North Gujarat University Act, the State Government granted affiliation to the appellant with North Gujarat University. Though the decision was taken to grant affiliation from June 1996 to December 1997, in the order, the period mentioned was from June 1996 to June 1997. That action adversely affected not only to the college but also to the students admitted by the College. The petitioner, therefore, approached this Court by filing a petition. At the time of hearing, a statement was made on behalf of the State Government that affiliation will be continued upto December 31, 1997. On the basis of the statement made by the learned Assistant Government Pleader, the learned Single Judge disposed of the petition. That order is challenged by the appellant in the present Letters Patent Appeal.

Mr. Patel, learned counsel for the appellant raised various contentions;

(1) There is no provision in the North Gujarat University Act, granting affiliation for a limited period and that action was illegal, bad in law and contrary to the provisions of the Act.

(2) Once affiliation is granted in accordance with the provisions of law, it would continue for ever. Such affiliation can be withdrawn or cancelled by taking an appropriate action under Sec.41 of the Act.

(3) The impugned action is arbitrary, discriminatory and unreasonable inasmuch as two colleges situated at Baroda and Ahmedabad, outside the jurisdictional area of North Gujarat University have been granted such

affiliation.

(4) Though action of the State Government was challenged as illegal and malafide, no counter affidavit was filed by the State Authorities. The allegations, therefore, must be deemed to have been admitted by them.

(5) When affiliation was granted to the appellant Saurashtra University was not having Homeopathy course. Such affiliation would continue irrespective of the fact that such course has now been recognised by Saurashtra University.

(6) The impugned action would adversely affect future of those students who have been admitted by the appellant and who have undertaken study. An appropriate direction may be issued so that their career may not be ruined.

Mr.Shelat for Mr.Anjaria, learned counsel for North Gujarat University, supported the order passed by the learned Single Judge. He submitted that no error is committed by the learned Single Judge in dismissing the petition. Considering to the provisions of both the Acts, namely, North Gujarat University Act, and Saurashtra University Act, the learned Single Judge directed the appellant to apply for affiliation to Saurashtra University which is clearly legal and lawful and no interference is called for.

The appellant was aware since the beginning that the privilege was granted by the State Government in exercise of powers under sub-section (4) of Section 5 of the North Gujarat University Act for a limited period of 1 1/2 years. As there was an error in mentioning the period, which might have caused prejudice to the college as well as students, the appellant approached this court with a limited prayer in the petition to continue affiliation upto December 1997. The court considered that fact and granted limited relief pursuant to a statement made on behalf of the Government.

The conduct of the appellant according to Mr.Shelat, was also eloquent. On 18th December 1996, an order was passed by the State Government. On the same day the appellant was informed that it was for a period of one year (though it was to be for 1 1/2 years) and the appellant had to get itself affiliated with Saurashtra University thereafter. It was, therefore, obligatory on the part of the appellant to take appropriate proceedings in accordance with law to get affiliation with Saurashtra

University. Till December 31, 1997, the appellant has not got affiliated with Saurashtra University. It cannot now blame North Gujarat University and this court may not direct North Gujarat University to grant or to continue affiliation of the appellant.

If the appellant has grievance against Saurashtra University that in spite of an application for affiliation, no action was taken by that University, it can take an appropriate action against Saurashtra University. It is, however, not open to the appellant to claim relief against North Gujarat University by seeking a direction that during the intervening period, its affiliation to North Gujarat University should be continued. Such a prayer is unwarranted, illegal and unlawful.

Regarding the students who have undertaken study in the appellant college, Mr. Shelat stated that "the students of the First Year who have completed study for 1 1/2 years and for whose benefit the exercise was undertaken, will be allowed to appear at the examination if such request will be made by the appellate college". He, however, clarified that the University is informed only about those students.

Mr.S.T.Mehta, Assistant Government Pleader also stated that affiliation was granted to the appellant upto December 31, 1997. As in the order the period was mentioned upto June 1997, a statement was made that it would be continued upto December 31, 1997. Thus, from the beginning it was clear that the privilege was granted to the appellant college upto December 1997. It was, therefore, not necessary for the State Government to file any counter and to deny averments and/or allegations in the petition.

When the appeal was placed for admission, it was stated that if Saurashtra University would be a party respondent, some solution could be found out. Accordingly, an application was made by the appellant (Civil Application No.12549 of 1997) to implead Saurashtra University, Rajkot as a party respondent. Notice was issued to it through Registrar. Interim order was also granted by the Division Bench that the affiliation of the appellant with North Gujarat University shall continue. Pursuant to notice issued by the Court, Saurashtra University also appeared before us. We have heard Mr.J.R.Nanavati for respondent no.3.

Mr.Nanavati stated that initially Saurashtra

University had no course in Homeopathy medicine but it was faculty of Homeopathy. An application has already been made by the appellant for affiliation which will be decided by Saurashtra University in accordance with law in the light of materials placed by the appellant and appropriate decision will be taken. He submitted that in the petition, no relief was claimed against Saurashtra University. It was also not joined as party respondent. Hence, in this Letters Patent Appeal no direction can be issued against Saurashtra University.

Having considered rival contentions of the parties and having heard the learned advocates, in our opinion, it cannot be said that the order passed by the learned Single Judge suffers from any infirmity or is otherwise arbitrary, illegal or erroneous.

Provisions of Section 5 of the North Gujarat University Act, 1986 are, in our opinion, abundantly clear. Sub-section (1) thereof enacts that no educational institution situated within the University area shall, save with the sanction of the State Government and the University, be associated in any way with or seek admission to any privileges of, any other University established by law. Looking to the language of sub-section (1), it is clear and the learned Single Judge was right in observing that it demarcated jurisdictional area. A pari materia provision is found in sub-section (1) of Section 5 of the Saurashtra University Act, 1965. Reading these provisions, we are satisfied that as a general principle, no educational institution within the University area shall be associated with any other University and sanction of the State Government and the University concerned is required if such affiliation is to be granted with other University. Sub-section (4) of Section 5 of the North Gujarat University Act as also sub-section (4) of Section 5 of the Saurashtra University Act, no doubt, enable the State Government to allow an educational institution to be admitted to the privileges of another University. The said provision, however, is in the nature of an exception or proviso to the general rule. The learned Single Judge, in our opinion, therefore, was right in observing that ordinarily, every educational institution should be associated with the University in that area. But subject to such conditions and restrictions as the University and the State Government may impose, the State Government in exercise of the powers under sub-section (4) may grant to any educational institution outside the university area the privileges of the University.

In the instant case, no application was granted by North Gujarat University. It is not even the case of the appellant college. In exercise of powers under Section 5(4) of the Act, the appellant was admitted to the privileges to North Gujarat University. Sub-section (4) of Section 5 enacts that such privileges can be granted subject to such conditions and restrictions as the State Government thinks fit to impose. Accordingly, the State Government has admitted the privileges to the appellant college with the North Gujarat University upto December, 1997.

In our view, the State Government has power to restrict the period and such action could not be said to be illegal or de hors the Act. Hence, it was not open to the appellant to seek a writ of mandamus from this court directing the State Government to continue the privileges conferred on the appellant.

Regarding affiliation, according to Mr. Shelat, the contention of the learned counsel for the appellant is not well founded. Sub-section (5) of Section 35 clarifies that when an application for affiliation is made by any educational institution, the State Government may grant or refuse the application or any part thereof. Thus, it cannot be said that no affiliation can be granted for a limited period as contended by the appellant. In the instant case, however, we do not wish to express final opinion on that question. When the State Government exercised power under sub-section (4) of Section 5 of the Act, the appellant was specifically and unequivocally informed that it was for a limited period upto December 1997. The appellant accepted the said benefit. It is, therefore, not open to the appellant now to raise objection against the action of the State Government.

The appellant seeks a writ of mandamus from this court against State Government as well as against North Gujarat University. For such relief, the appellant has to show that there is a legal, justiciable and existing right of the appellant and corresponding legal duty of the respondent University which can be ordered to be complied with by issuance of such writ. If no such right exists, this court cannot exercise powers under Art. 226 of the Constitution of India. In State of U.P. v. Harish Chandra, AIR 1996 SC 2173, a select list was prepared. Under the relevant rules, life of such list was of one year. After that period was over, a petition was filed seeking relief to get appointment from the said list. The High Court granted the relief and the State

approached the Supreme Court. Reversing the decision of the High Court and dismissing the petition filed by the petitioner, the Supreme Court observed:

"Under the Constitution a mandamus can be issued

by the Court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which is contrary to law. This being the position and in view of the Statutory Rules contained in Rule 26 of the Recruitment Rules we really fail to understand how the High Court could issue the impugned direction to recruit the respondents who were included in the select list prepared on 4.4.87 and the list no longer survived after one year and the rights, if any, of persons included in the list did not subsist. In the course of hearing the learned counsel for the respondents, no doubt have pointed out some materials which indicate that the Administrative Authorities have made the appointments from a list beyond the period of one year from its preparation. The learned counsel appearing for the appellants submitted that in some cases pursuance to the direction of the Court some appointments have been made but in some other cases it might have been done by the Appointing Authority. Even though we are persuaded to accept the submission of the learned counsel for the respondents that on some occasion appointments have been made by the Appointing Authority from a select list even after the expiry of one year from the date of selection but such illegal action of the Appointing Authority does not confer a right on an applicant to be enforced by a Court under Article 226 of the Constitution. We have no hesitation in coming to the conclusion that such appointments by the Appointing Authority have been made contrary to the provisions of the Statutory Rules for some unknown reason and we deprecate the practice adopted by the Appointing Authority in making such appointments contrary to the Statutory Rules." (Emphasis supplied)

No doubt, the decision relates to service matter but the principle underlying it applies to the case in hand as well. When the petitioner approaches a court of law seeking mandamus, he must establish that he has a legal right which is subsisting and that there is corresponding duty on the part of the respondent. If such duty is not complied with, a court can issue mandamus directing the authorities to perform its duty. Our attention was not invited to any provision of the North Gujarat University Act, 1986 conferring right on the appellant to get affiliation and corresponding duty upon the University to grant such affiliation and by not granting affiliation, the University committed breach or violation of such duty. If it is not established, in our opinion, by not granting relief to the appellant, the learned Single Judge has not committed any illegality.

So far as violation of Article 14 is concerned, no such point appears to have been argued before the learned Single Judge. That apart, no sufficient materials or particulars have been brought on record. Moreover, it is settled law that the doctrine of equality enshrined in Article 14 of the Constitution is a positive concept, not a negative one and it cannot be pressed in service to perpetuate illegality. That is not the sweep of Article 14. (Vide Kaushik Patel v. Gujarat Water Resources Development Corporation Ltd. (1997) 38(1) GLR 701).

It was stated that the appellant has taken various steps in the pious hope that it would impart education to students and such education would serve larger public interest. Substantial amount was also spent by the appellant. Moreover, appellant is a public trust and in discharge of duty towards society, an action was taken.

In our opinion, however, even if it is believed that everything was done by the appellant-trust in good faith, it does not change legal position and when the learned Single Judge in the light of statutory provisions has passed an order, which cannot be said to be without jurisdiction or contrary to law, it cannot be interfered with by us.

For the foregoing reasons, we do not see any ground to interfere with the order passed by the learned Single Judge. The appeal deserves to be dismissed and is accordingly dismissed. In the facts and circumstances of the case, however, there shall be no order as to costs.

Dt. 13.2.1998. (C.K.THAKKER J.)

(A.L.DAVE J.)
